

CUSTOMER NO.: 24498

AF/2623
PATENT
Atty. Dkt. No. PU010152 JFW



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Re Application of: Yongmei Cang

Serial No.: 09/916,903

Confirmation No.: 8714

Filed: July 27, 2001

For: **HIGH BANDWIDTH
COMMUNICATIONS TECHNIQUE
FOR MOBILE COMMUNICATIONS
DEVICES**

MAIL STOP APPEAL BRIEF - PATENTS
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Group Art Unit: 2623

Examiner: Scott E. Beliveau

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Dear Sir:

APPELLANT'S RESPONSE TO THE EXAMINER'S ANSWER

Appellant submits this Response to the Board of Patent Appeals and Interferences in response to the Examiner's Answer dated November 29, 2006, in reply to the Appellant's Appeal Brief.

I: Rejection of claims 1-17 under 35 U.S.C. 103(a)

A. 35 U.S.C. § 103(a) - Claim 1.

Elenbaas and Barton fail to teach, suggest or make obvious "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming"

The Examiner alleges:

Elenbaas processes MPEG compressed video derived from a number of available channels (Para. [0017] and [0025]). MPEG compressed video comprises intra and/or non-intra pictures. The 'processing' involves "determining which of the predetermined number of channels contains programming" and in particular those channels that contain programming of interest to the user (Para. [0017] and [0022]) (ex. news broadcast on CNN). Finding a particular program of interest requires that the system also "determines which of the predetermined number of channels contain programming" in order to receive/process the programming of interest since programming is being received via one of a plurality of channels. (Page 13, Para. 1).

The Appellant respectfully disagrees with the Examiner's assessment. More specifically, Elenbaas teaches a video retrieval system that allows a user to quickly and easily select and receive stories of interest from a video stream. In Elenbaas, the video retrieval system classifies stories and delivers samples of selected stories that match each user's current preference. (See Abstract). However, Elenbaas specifically recites:

"The first frame of each scene can be identified based upon the differences between frames. As the anchor moves during the introduction of the story, for example, only slight differences will be noted from frame to frame. The region of the image corresponding to the news desk, or the news room backdrop, will not change substantially from frame to frame. When a scene change occurs, for example by switching to a remote camera, the entire image changes substantially. A number of image compression or transform schemes provide for the ability to store or transmit a sequence of images as a sequence of difference frames. If the differences are substantial, the new frames are typically encoded directly as reference frames; subsequent frames are encoded as differences from these reference frames." (See Elenbaas, Para. 25).

As clearly evident from the portions of Elenbaas presented above, in Elenbaas reference frames are identified by identifying large changes from one frame to a next.

As such, Elenbaas fails to “determine which of the predetermined number of channels contain programming”. That is in Elenbaas, a frame without programming will be identified as a reference frame among a plurality of possible reference frames. That is, other channels containing programming but having very different images will also be identified by the invention of Elenbaas as a reference frame just like the channels not containing programming and the two can not be distinguished by the invention of Elenbaas. The empty frame will then be presented to a user for selection among a number of other reference frames. As such, it is very clear that the invention of Elenbaas absolutely fails to teach, suggest or make obvious to “determine which of the predetermined number of channels contain programming” as taught and claimed by the Appellant.

In an alternate embodiment of user selection, Elenbaas specifically recites:

“Optionally, a visual characterizer 130 characterizes story segments 111 based on their visual content. The visual characterizer 130 may be used to identify people appearing in the story segments, based on visual recognition techniques, or to identify topics based on an analysis of the image background information. For example, the visual characterizer 130 may include a library of images of noteworthy people. The visual characterizer 130 identifies images containing a single or predominant figure, and these images are compared to the images in the library.” (See Elenbaas, Para. 27).

Again, as clearly evident from the portions of Elenbaas presented above, Elenbaas fails to “determine which of the predetermined number of channels contain programming” as taught and claimed by the Appellant. Instead Elenbaas teaches a characterizer for identifying images of interest based on their visual content. As such, an empty channel would be identified by the invention of Elenbaas as a channel not having a character or image of interest and not as a channel not containing programming. In Elenbaas, channels containing programming but not having images or characters of interest would be classified the same as a channel not containing programming and as such the two can not be distinguished by the invention of Elenbaas. As such, it is very clear that the invention of Elenbaas absolutely fails to teach, suggest or make obvious to “determine which of the predetermined number of channels contain programming” as taught and claimed by the Appellant.

For at least the reasons recited above, the Appellant respectfully traverses the Examiner's reasoning that "Finding a particular program of interest requires that the system also 'determines which of the predetermined number of channels contain programming' in order to receive/process the programming of interest since programming is being received via one of a plurality of channels". That is, as clearly demonstrated by at least the portions of Elenbaas presented above and the reasoning presented above, the invention of Elenbaas, although finding a particular program of interest, absolutely fails to "determine which of the predetermined number of channels contain programming to provide the subset of channels with programming" as taught and claimed by the Appellant. Instead, in Elenbaas channels without programming can be identified as reference frames or as channels not having a character, text or image of interest, but cannot be identified as a channel with or without programming and does not "determine which of the predetermined number of channels contain programming to provide the subset of channels with programming" as taught and claimed by the Appellant.

The Examiner further alleges:

Barton is relied upon to teach the step of "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels". Barton explicitly states that video programming distributed on at "least a portion of a predetermined number of channels from the plurality of channels" is MPEG encoded (Col 3, Lines 30-61). MPEG encoded video signals comprise 'intra and/or non-intra pictures' as required by MPEG encoding. Barton further explicitly teaches that the encoded video comprises 'intra and/or non-intra pictures' in disclosing the usage of I-frames (intra pictures) and/or P- and B-frames (non-intra pictures) (Col 6, lines 51-58). (Page 13, Para. 2).

The Appellant respectfully disagrees with the Examiner's assessment. That is, the Appellant continues to respectfully submit that the teachings of Barton, also fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which

of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1. That is, the Appellant respectfully submits that the teachings of Barton, absolutely fail to bridge the substantial gap between Elenbaas and the invention of the Appellant.

That is, the teachings of Barton for a multimedia time warping system, which allows a user to store selected television broadcast programs while simultaneously watching or reviewing another program, fail to teach, suggest or make obvious at least a method of creating a subset of channels with programming from a plurality of channels including at least "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming " as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1.

More specifically, Barton teaches a multimedia time warping system, which allows a user to store selected television broadcast programs while the user is simultaneously watching or reviewing another program. In Barton, television (TV) input streams can be received in a multitude of forms, for example, analog forms such as National Television Standards Committee (NTSC) or PAL broadcast, and digital forms such as Digital Satellite System (DSS), Digital Broadcast Services (DBS), or Advanced Television Standards Committee (ATSC). Analog TV streams are converted to a Moving Pictures Experts Group (MPEG) formatted stream for internal transfer and manipulation, while pre-formatted MPEG streams are extracted from the digital TV signal and presented in a similar format to encoded analog streams. The invention of Barton parses the resulting MPEG stream and separates it into its video and audio components. It then stores the components into temporary buffers.

The parser and event buffer decouple the CPU from having to parse the MPEG stream and from the real time nature of the data streams. This decoupling allows for slower CPU and bus speeds which translate to lower system costs. The video and audio components are stored on a storage device. When the program is requested for

display, the video and audio components are extracted from the storage device and reassembled into an MPEG stream. The MPEG stream is sent to a decoder. The decoder converts the MPEG stream into TV output signals and delivers the TV output signals to a TV receiver.

However, there is absolutely no teaching, suggestion or disclosure in Barton for at least "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels **to determine which of the predetermined number of channels contain programming**" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1. That is, in Barton portions of a predetermined number of channels of a plurality of channels are not encoded and processed to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming as taught and claimed by the Appellant. Instead in Barton, analog TV streams are converted to a Moving Pictures Experts Group (MPEG) formatted stream for internal transfer and manipulation including recording.

In fact, in the Examiner's Answer, the Examiner does not submit any arguments that Barton teaches or suggests "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1, and as such the Appellant submits that the Examiner concedes that Barton absolutely fails to teach such technical features of the Appellant's invention.

As such and at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1, the Appellant submits that independent claim 1 is not rendered

obvious under the provisions of 35 U.S.C. § 103(a) by the teachings of Elenbaas and Barton, alone or in any allowable combination, and, as such, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

Furthermore, the Appellant continues to submit that there is absolutely no motivation or suggestion in either reference for the combination of the references to attempt to teach the invention of the Appellant. More specifically, there is no motivation or suggestion in the invention of Elenbaas for a personalized news retrieval system for the combination of the references and likewise, the invention of Barton for a multimedia time warping system, which allows a user to store selected television broadcast programs while simultaneously watching or reviewing another program does not expressly or impliedly motivate or suggest such a combination as required for the combination of references under 35 U.S.C. § 103. The teachings of Elenbaas and Barton are directed to different solutions addressing different deficiencies in the prior art of unrelated areas of art.

More specifically, for prior art reference to be combined to render obvious a subsequent invention under 35 U.S.C. § 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. Uniroyal v. Rudkin-Wiley, 5 U.S.P.SQ.2d 1434, 1438 (Fed. Cir. 1988). The teachings of the references can be combined **only** if there is some suggestion or incentive in the prior art to do so. In re Fine, 5 U.S.P.SQ.2d 1596, 1599 (Fed. Cir. 1988). ***Hindsight is strictly forbidden. It is impermissible to use the claims as a framework to pick and choose among individual references to recreate the claimed invention*** Id. at 1600; W.L. Gore Associates, Inc., v. Garlock, Inc., 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983).

Moreover, the mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984).

The Appellant again submits that even if there was a motivation or suggestion to combine (which the Appellant maintains that there is not), the teachings of Elenbaas and Barton, in any allowable combination, fail to teach, suggest or make obvious the

Appellant's invention, at least with regard to the Appellant's independent claim 1. That is, the teachings of Barton fail to bridge the substantial gap between at least the Appellant's independent claim 1 and the teachings of Elenbaas for at least "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1.

B. 35 U.S.C. § 103(a) - Claim 2

Claim 2 depends directly from independent claim 1 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 1, the Appellant respectfully submits that dependent claim 2 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 1. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fails to teach, suggest or make obvious the Appellant's claim 1 further limited by "the step of outputting channels exclusively corresponding to the subset of channels" as in claim 2.

That is, and for at least the same reasons provided in Section A above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's invention as claimed in dependent claim 2, which depends directly from independent claim 1.

Therefore, the Appellant submits that claim 2, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

C. 35 U.S.C. § 103 - Claim 3

Claim 3 depends directly from independent claim 1 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 1, the Appellant respectfully submits that dependent claim 3 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 1. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fails to teach, suggest or make obvious the Appellant's claim 1 further limited by "comprising the step of analyzing at least a portion of an audio signal in the predetermined channels to determine which of the predetermined number of channels contain programming" as in claim 3.

That is, and for at least the same reasons provided in Section A above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's invention as claimed in dependent claim 3, which depends directly from independent claim 1.

Therefore, the Appellant submits that claim 3, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

D. 35 U.S.C. § 103(a) - Claim 4

Claim 4 depends directly from independent claim 1 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 1, the Appellant respectfully submits that dependent claim 4 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 1. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fails to teach, suggest or make obvious the Appellant's claim 1 further limited by "wherein each corresponding encoded signal is an MPEG video signal containing pictures selected from the group comprising intra pictures or non-intra pictures" as in claim 4.

That is, and for at least the same reasons provided in Section A above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's invention as claimed in dependent claim 4, which depends directly from independent claim 1.

Therefore, the Appellant submits that claim 4, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

E. 35 U.S.C. § 103(a) - Claim 5

Claim 5 depends directly from claim 4 which depends directly from independent claim 1 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's

independent claim 1 and dependent claim 4, the Appellant respectfully submits that dependent claim 5 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 1 and dependent claim 4. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's claims 1 and 4 further limited by "wherein said processing step further comprises one or more of the steps selected from the group comprising: counting a number of bits in at least one of the non-intra pictures in the MPEG video signal; analyzing motion vectors in at least one of the non-intra pictures in the MPEG video signal; analyzing discrete cosine coefficients of at least one of the intra pictures in the MPEG video signal; or obtaining a sample picture from one or more of the plurality of channels containing no programming, storing information from the sample picture in memory, and comparing information from at least one of the intra pictures in the MPEG video signal with the stored information from the sample picture" as recited in claim 5.

That is, and for at least the same reasons provided in Sections A and D above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1, and as further limited by the limitations of claim 4, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's invention as claimed in dependent claim 5, which depends directly from claim 4 and indirectly from independent claim 1.

Therefore, the Appellant submits that claim 5, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

F. 35 U.S.C. § 103(a) - Claim 6

Claim 6 depends directly from independent claim 1 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 1, the Appellant respectfully submits that dependent claim 6 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 1. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fails to teach, suggest or make obvious the Appellant's claim 1 further limited by "wherein said encoding step further comprises the step of encoding at least a portion of each of the plurality of channels to provide the corresponding encoded signal for each of the plurality of channels" as in claim 6.

That is, and for at least the same reasons provided in Section A above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's invention as claimed in dependent claim 6, which depends directly from independent claim 1.

Therefore, the Appellant submits that claim 6, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

G. 35 U.S.C. § 103(a) - Claim 7

Claim 7 depends directly from independent claim 1 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with

regard to at least the Appellant's independent claim 1, the Appellant respectfully submits that dependent claim 7 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 1. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fails to teach, suggest or make obvious the Appellant's claim 1 further limited by " wherein the subset of channels comprises a plurality of channel indicators for identifying the channels in the subset of channels " as in claim 7.

That is, and for at least the same reasons provided in Section A above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's invention as claimed in dependent claim 7, which depends directly from independent claim 1.

Therefore, the Appellant submits that claim 7, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

H. 35 U.S.C. § 103(a) - Claim 8

Claim 8 is an independent claim that recites similar relevant features as recited in the Appellant's independent claim 1. More specifically, claim 8 claims a method for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of

channels to determine which of the predetermined number of channels contain programming".

As described in section A above, the teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claim 1 and as similarly claimed in the Appellant's claim 8. That is, the Appellant respectfully submits that independent claim 8 is also not rendered obvious by Elenbaas and Barton, alone or in any allowable combination, and is allowable for at least the reasons stated above with respect to independent claim 1.

Therefore, the Appellant submits that claim 8, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

I. 35 U.S.C. § 102(b) - Claim 9

Claim 9 depends directly from independent claim 8 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 8, the Appellant respectfully submits that dependent claim 9 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 8. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's claim 8 further limited by "wherein the programming on the subset of channels contains video content" as recited in claim 9.

That is, and for at least the same reasons provided in Sections A and H above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method for creating a subset of channels with

programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1 and 8, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's invention as claimed in dependent claim 9, which depends directly from independent claim 8.

Therefore, the Appellant submits that claim 9, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

J. 35 U.S.C. § 103(a) - Claim 10

Claim 10 is an independent claim that recites similar relevant features as recited in the Appellant's independent claim 1. More specifically, claim 10 claims a system for creating a subset of channels with programming from a plurality of channels including a video processor programmed to "encode at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and to "process at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming".

As described in sections A and H above, the teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of

channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1 and 8 and as similarly claimed in the Appellant's claim 10. That is, the Appellant respectfully submits that independent claim 10 is also not rendered obvious by Elenbaas and Barton, alone or in any allowable combination, and is allowable for at least the reasons stated above with respect to independent claims 1 and 8.

Therefore, the Appellant submits that claim 10, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

K. 35 U.S.C. § 103(a) - Claim 11

Claim 11 depends directly from independent claim 10 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 10, the Appellant respectfully submits that dependent claim 11 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 10. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's claim 10 further limited by "wherein the system presents channels corresponding only to the subset of channel indicators stored in memory" as recited in claim 11.

That is, and for at least the same reasons provided in Sections A, H and J above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1, 8 and 10, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable

combination, also fail to teach, suggest or render obvious the Appellant's invention as claimed in dependent claim 11, which depends directly from independent claim 10.

Therefore, the Appellant submits that claim 11, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

L. 35 U.S.C. § 103(a) - Claim 12

Claim 12 depends directly from independent claim 10 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 10, the Appellant respectfully submits that dependent claim 12 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 10. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's claim 10 further limited by "comprising an audio detection circuit for analyzing at least a portion of an audio signal in the predetermined channels to determine which of the predetermined number of channels contain programming" as recited in claim 12.

That is, and for at least the same reasons provided in Sections A, H and J above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1, 8 and 10, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's invention as claimed in dependent claim 12, which depends directly from independent claim 10.

Therefore, the Appellant submits that claim 12, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

M. 35 U.S.C. § 103(a) - Claim 13

Claim 12 depends directly from independent claim 10 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 10, the Appellant respectfully submits that dependent claim 13 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 10. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's claim 10 further limited by "wherein each encoded signal is an MPEG video signal containing pictures selected from the group comprising intra pictures or non-intra pictures" as recited in claim 13.

That is, and for at least the same reasons provided in Sections A, H and J above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1, 8 and 10, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's invention as claimed in dependent claim 13, which depends directly from independent claim 10.

Therefore, the Appellant submits that claim 13, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

N. 35 U.S.C. § 103(a) - Claim 14

Claim 14 depends directly from claim 13 which depends directly from independent claim 10 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 10 and dependent claim 13, the Appellant respectfully submits that dependent claim 14 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 10 and dependent claim 13. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or make obvious the Appellant's claims 10 and 13 further limited by "wherein the video processor is further programmed to perform one or more of the steps selected from the group comprising: counting a number of bits in at least one of the non-intra pictures in the MPEG video signal; analyzing motion vectors in at least one of the non-intra pictures in the MPEG video signal; analyzing discrete cosine coefficients of at least one of the intra pictures in the MPEG video signal; or obtaining a sample picture from one or more of the plurality of channels containing no programming, storing information from the sample picture in memory, and comparing information from at least one of the intra pictures in the MPEG video signal with the stored information from the sample picture" as recited in claim 14.

That is, and for at least the same reasons provided in Sections A, H, J and M above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 10 and 13, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's

invention as claimed in dependent claim 14, which depends directly from claim 13 and indirectly from independent claim 10.

Therefore, the Appellant submits that claim 14, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

O. 35 U.S.C. § 103(a) - Claim 15

Claim 15 depends directly from independent claim 10 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 10, the Appellant respectfully submits that dependent claim 15 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 10. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's claim 10 further limited by "wherein the encoder encodes at least a portion of each of the plurality of channels to provide a corresponding encoded signal for each of the plurality of channels" as recited in claim 15.

That is, and for at least the same reasons provided in Sections A, H and J above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1, 8 and 10, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's invention as claimed in dependent claim 15, which depends directly from independent claim 10.

Therefore, the Appellant submits that claim 15, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

P. 35 U.S.C. § 103(a) - Claim 16

Claim 16 is an independent claim that recites similar relevant features as recited in the Appellant's independent claims 1, 8 and 10. More specifically, claim 16 claims a system for creating a subset of channels with programming from a plurality of channels including an encoder for "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and a processor using at least an encoder to "process at least a portion of an audio signal in the predetermined number of channels from the plurality of channels wherein the processor determines which of the predetermined channels contain programming to provide a program channel subset containing at least audio and/or video".

As described in sections A, H and J above, the teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1, 8 and 10 and as similarly claimed in the Appellant's claim 16. That is, the Appellant respectfully submits that independent claim 16 is also not rendered obvious by Elenbaas and Barton, alone or in any allowable combination, and is allowable for at least the reasons stated above with respect to independent claims 1, 8 and 10.

Therefore, the Appellant submits that claim 16, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

Q. 35 U.S.C. § 103(a) - Claim 17

Claim 17 depends directly from independent claim 16 and recites further limitations thereof. At least because teachings of Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious the invention of the Appellant with regard to at least the Appellant's independent claim 16, the Appellant respectfully submits that dependent claim 17 is also not rendered obvious and is allowable for at least the reasons stated above with respect to independent claim 16. The Appellant further submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's claim 16 further limited by "wherein the subset of channels comprises a plurality of channel indicators for identifying the channels in the subset of channels" as recited in claim 17.

That is, and for at least the same reasons provided in Sections A, H, J and P above, at least because Elenbaas and Barton, alone or in any allowable combination, fail to teach, suggest or make obvious at least a method and system for creating a subset of channels with programming from a plurality of channels including "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" and "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed in at least the Appellant's claims 1, 8, 10 and 16, the Appellant respectfully submits that Elenbaas and Barton, alone or in any allowable combination, also fail to teach, suggest or render obvious the Appellant's invention as claimed in dependent claim 17, which depends directly from independent claim 16.

Therefore, the Appellant submits that claim 17, as it now stands, fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

For at least the reasons advanced above, the Appellant respectfully urges that the rejections of claims 1-17 as being rendered obvious under 35 U.S.C. §103 are improper. Reversal of the rejections is respectfully requested.

Response to Examiner's Answer
Serial No. 09/916,903

Respectfully submitted,

16 Jan '07
Date

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